

REMARKS

Independent claim 1 is amended to recite that R in Formula (1) is “a residual group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, and 1,2-pentanediol or 1,2-hexanediol.” Support for the amendment may be found, for example, at page 11 and 13 of the specification. Claim 3 is amended to correct a typographical error. Claim 10 is amended to properly depend from claim 1 and to delete the recitation “of 5 or 6 carbon atoms”. Independent claim 17 is amended to recite that R in Formula (1) is “a group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, said stabilizer comprising 1,2-pentanediol or 1,2-hexanediol or both.” Support for the amendment may be found, for example, at pages 11, 13 and 44-45 of the specification. Claims 2, 8, 9, 11, 12, 15, 16 and 18 are canceled. No new matter is added. Upon entry of the Amendment, which is respectfully requested, claims 1, 3-7, 10, 13, 14 and 17 will be pending.

Claim Objections

Referring to page 2 of the Office Action, claim 3 is objected to because “myristic acic” should be “myristic acid”.

Appropriate correction is made. Accordingly, withdrawal of the objection to claim 3 is respectfully requested.

Claims 4-14 are objected to under 37 C.F.R. § 1.75(c) as being in improper form because a multiple dependent claim cannot depend upon a multiple dependent claim.

Claims 4-14 were amended in the Preliminary Amendment of April 13, 2006 when the application was filed so that there are no multiple dependent claims. In this regard, the Preliminary Amendment can be seen in the PAIR system on the PTO website. Furthermore, claims 8, 9, 11 and 12 are canceled. Accordingly, it is respectfully requested that the objection to claims 4-7, 10, 13 and 14 is withdrawn.

Claim Rejections under 35 U.S.C. § 101

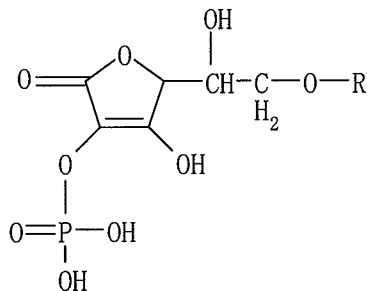
Referring to page 2 of the Action, claims 15 and 16 are rejected under 35 U.S.C. § 101 as allegedly being indefinite.

Since claims 15 and 16 are canceled, withdrawal of the rejection is respectfully requested.

Claim Rejections under 35 U.S.C. § 102

Referring to page 3 of the Action, claims 1-4, 6, 7, 11-15 and 17 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by EP 1077066 (Ito).

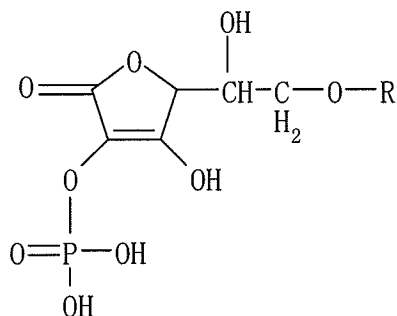
Claim 1 is amended to recite that the agent for skin external use comprises a salt of higher fatty acid ester of ascorbic acid-2-phosphoric acid ester, and said higher fatty acid ester of ascorbic acid-2-phosphoric acid ester is represented by the following formula (1):



Formula (1)

wherein R is a residual group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, and 1,2-pentanediol or 1,2-hexanediol.

In addition, claim 17 is amended to recite that the stabilizer for an agent for skin external use contains a salt of higher fatty acid ester of ascorbic acid-2-phosphoric acid ester, and said higher fatty acid ester of ascorbic acid-2-phosphoric acid ester being represented by the following formula (1):



Formula (1)

wherein R is a group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, said stabilizer comprising 1,2-pentanediol or 1,2-hexanediol or both.

Ito does not disclose or suggest a compound comprising a residual group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, and 1,2-pentanediol or 1,2-hexanediol as required by amended claims 1 and 17. Therefore, claims 1 and 17 are not anticipated or rendered obvious by Ito.

Claims 3-4, 6, 7, 13 and 14, which depend from claim 1, are patentable by virtue of their dependencies from claim 1. As noted, claims 2, 11 and 12 are canceled.

Accordingly, withdrawal of the § 102(b) rejection of claims 1-4, 6, 7, 11-15 and 17 based on Ito is respectfully requested.

Claim Rejections under 35 U.S.C. § 103

Referring to page 3 of the Action, claims 5, 8-10, 16 and 18 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ito.

Applicants traverse and respectfully request the Examiner to reconsider in view of the following remarks.

Claims 5 and 10 depend from claim 1 and are therefore patentable over the prior art for at least the reasons mentioned with respect to claim 1. Claims 5 and 10 are also patentable for the following reasons.¹

An object of the present invention is to prevent occurrence of turbidity or precipitation with time. In this regard, Applicants submit comparative evidence of non-obviousness by having conducted the following experiments evaluating turbidity and precipitation by visual observation. Applicants can place this evidence in a Rule 132 Declaration if the Examiner wishes.

(1) Comparative Examples

(1-1) Evaluation of turbidity and precipitation by visual observation

By following the same method as disclosed in Example 30 of the present application, experiments were conducted using the following polyhydric alcohols (A) to (D) to obtain lotions.

(A) propyleneglycol (disclosed in Ito)

(B) dipropyleneglycol (disclosed in Ito)

(C) butyleneglycol (Outside scope of the present invention)

(D) glycerin (Outside scope of the present invention)

The results are shown in the table below.

(1-2) Measurement of optical density

¹ Claims 8, 9, 16 and 18 are canceled.

As a quantitative evaluation, measurement of optical density was carried out as follows.

Apparatus: U-2000 type double-beam spectrophotometer, manufactured by Hitachi Ltd.

Wavelength for measurement: 660nm

Measuring method: Put a sample into a cell after stirring it thoroughly, and measure absorbance.

The results are shown in the following table.

(1-3) Results

No.		Comparative Examples				Example 30	Example 33
		A	B	C	D		
1	Ascorbic acid-2-phosphoric acid-6-palmitic acid sodium salt	1	1	1	1	1	1
2	1,2-Pentanediol	-	-	-	-	5	-
3	1,2-Heanediol	-	-	-	-	-	5
4	Propyleneglycol	5	-	-	-	-	-
5	Dipropyleneglycol	-	5	-	-	-	-
6	Butyleneglycol	-	-	5	-	-	-
7	Glycerin	-	-	-	5	-	-
8	Trehalose	0.05	0.05	0.05	0.05	0.05	0.05
9	Citric Acid	0.2	0.2	0.2	0.2	0.2	0.2
10	Sodium citrate	0.2	0.2	0.2	0.2	0.2	0.2
11	Methyl para-hydroxybenzoate	0.1	0.1	0.1	0.1	0.1	0.1
12	Purified water	Rest	Rest	Rest	Rest	Rest	Rest
	Turbidity	±	±	±	±	-	-
	Precipitation	-	-	-	-	-	-

	Optical density	0.2	0.2	0.2	0.2	0.0	0.0
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It is clear from the table that in all the lotions using alcohols disclosed in Ito and alcohols that do not satisfy the requirements of the present invention, turbidity is observed.

In contrast, in the lotions of examples 30 and 33 of the present invention, turbidity is not observed at all, and the lotions have excellent clarity.

In general, preventing the occurrence of turbidity is important. With respect to agents for skin external use, especially cosmetics, it can be said that the psychological effects (appearance and sensitivity) as well as the pharmacological effect are important aspects of trade value.

In particular, a cosmetic consumer construes change in color and odor, turbidity, precipitation and the like as deterioration of cosmetic. For this reason, stability of the cosmetic, that is, prevention of change in appearance as much as possible, is demanded.

Since the cosmetic is usually filled in a clear container, even a little change in color, turbidity or precipitation can be easily recognized by visual observation. Therefore, it is extremely important to maintain the trade value by achieving a cosmetic that does not produce turbidity.

As evidenced by the foregoing comparative data, the present invention achieves unexpectedly superior results as compared to Ito. Thus, it is submitted that Ito does not anticipate or render obvious the present invention.

In view of the above, the Examiner is kindly requested to reconsider and withdraw the 35 U.S.C. § 103(a) rejection of claims 5 and 10 based on Ito.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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23373

CUSTOMER NUMBER

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